

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 244 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No

HARESH B ADESARA

Versus

MANSUKHLAL G BADANI

Appearance:

MR SURESH M SHAH for Petitioner

SERVED BY RPAD - (R) for Respondent No. 1

MR HM LATHIA for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/09/98

ORAL JUDGEMENT

This revision under section 115 of the Code of Civil Procedure has been filed against an order of the Court below refusing to condone two days delay in filing Misc.Civil Appeal against the order of the Trial Court. The learned Counsel for the parties have been heard and the impugned order has been examined. After examining the impugned order I am satisfied that it is a case where the lower appellate Court while rejecting the application for condonation of delay has failed to exercise

jurisdiction vested in it by law and was guided by extraneous considerations which are altogether irrelevant for deciding the question of condonation of delay. Practically and primarily the Court below was of the view that because another suit based on the same cause of action was filed by the present revisionist, hence, it amounts to abuse of the process of law. This was not the point which should have weighed with the lower appellate Court. The lower appellate Court was called upon to consider and decide whether there is any sufficient cause explaining two days delay in filing the appeal. On that point the order under revision is silent.

Relevant dates are that the judgment against which appeal was proposed to be filed was rendered on 5.5.1994. On the same date the revisionist applied for certified copy of the judgment. The certified copy was ready for delivery on 21.5.1994 which itself shows that there was slackness in the copying department of the trial Court which took so much time for preparation of the copies. In the application for condonation of delay it is specifically mentioned that four days thereafter viz. on 25.5.1994 the revisionist came to know that the copies were ready. The copies were accordingly received and thereafter appeal was filed on 22.6.1994. If these four days are excluded then the appeal will be within limitation. It cannot be said that the revisionist was negligent in not seeking information whether copies were ready or not. It was abnormal situation where copying department took 16 days time for preparing copies. There is no sufficient rebuttal of the allegation that the revisionist received information that copies were ready only on 25.5.1994. It is also stated in the application for condonation of delay that Counsel was contacted and the matter was to be taken to the High Court also.

The lower appellate Court has not assigned any reason for not believing this explanation of the revisionist, rather it has chosen to remain silent and has not at all considered this in its order. Unless the lower appellate Court observed that this explanation was unbelievable or that during these four days the revisionist was hopelessly negligent in collecting the copies, application for condonation of delay could not have been rejected.

It is true that there was delay in filing appeal hence the cause of delay has to be considered. Two days

delay is insignificant for the reasons mentioned in the foregoing portion of the order.

If an alternative remedy is available to the litigant, he can avail of the same and that cannot be a ground for imputing malafide on the revisionist for delayed preferring of appeal. If there would have been malafide intention on the part of the revisionist he would not have applied for certified copy on the day, the judgment was delivered. This itself shows that the revisionist was vigilant in applying for copies. It is because of the delay in preparation of copies that he could not collect the same. Four days delay in these circumstances cannot be attributed towards malafide of the revisionist. It is not a case where on account of so called alleged malafide it can be held that there is no sufficient cause explaining two days delay in preferring the appeal. Attempt in obtaining interim relief either from the High Court in the revision or from the Trial Court in subsequently, instituted suit cannot be termed as malafide action of the revisionist on account of which application for condonation of delay could be rejected. If the subsequent suit is barred by any provisions of law it is for the Court where such suit is pending to take decision on this question.

Considering the explanation of the revisionist I find that there was sufficient explanation for two days delay in preferring the appeal.

Each case has to be decided on its own facts and no absolute rule of law can be laid down that even if it is a case of insignificant delay of two days application must be rejected. The view taken by this Court in Municipal Corporation of Ahmedabad Vs. Voltas Limited, 1995(1) GLH 549 and District Development Officer Vs. Ramanbhai Ashabhai Patel & Others, 1994(1) GLH(U.J)13 does not amount to laying down such absolute rule of law.

For the reasons stated above I am of the view that the lower appellate Court has failed to exercise jurisdiction vested in it by law and has also improperly exercised jurisdiction vested in it by law inasmuch as it has failed to consider sufficiency of cause offered by revisionist in preferring the appeal. There is thus no escape but to allow this revision. Revision is accordingly allowed. Order under revision is set aside.

Application of condonation of delay in preferring Misc.Appeal is hereby allowed. The lower appellate Court is directed to register the Misc.Appeal and hear and decide the same in accordance with law.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt